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COML 81-1200

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DD/A Registry  
81-1930

15 SEP 1981

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM : Maurice Lipton  
Comptroller

SUBJECT : Section 103 of the Proposed 1982 Intelligence  
Authorization Bill ☐

DD/A REGISTRY  
"Legal"

1. We need a decision from you on how to respond to a proposed provision in the House version of the 1982 Intelligence Authorization Bill entitled "Notification of expenditures in excess of Program Authorization." The proposed provision and sectional analysis are at Attachment A. An identical provision was developed by HPSCI and enacted last year (FY 1981) to limit the money we could spend without Congress' knowledge. Although in effect for Fiscal Year 1981, CIA has made no reports to Congress specifically in response to the provision, we do not know if any other Community components have reported. ☐

2. The Office of Finance and others are concerned that we may not be fully adhering to the intent of Section 103. Possible interpretations of what needs to be reported include Economy Act transactions, proprietary income, accommodation procurements for other governments, and foreign government contributions to programs (e.g., CA), none of which we have up to now systematically reported to Congress. Even Congressional staffers agree that the provision is imprecise and subject to varying interpretation. It is not likely, however, that HPSCI could be easily persuaded to drop the provision in the 1982 authorization. We need policy guidance on how far the Agency is willing to be committed on this subject. ☐

3. Issues. We need your decisions as to whether to attempt to exempt from the reporting:

- Economy Act Transactions. The key example is the DoD funds for assistance to the Iranian rescue mission. Other uses are National Program activities carried out by CIA, as well as more routine intergovernmental activities, such as reimbursable services to IC Staff, Defense, State, and others, when CIA can do the work more efficiently or effectively.

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Con

- The Committee staff will likely oppose this interpretation and press for some reporting on sensitive projects (i.e., toward Option B)

B. Discuss with Committees and accept reporting of some agreed delineation of the above activities which will assure the Committees that they will be informed of sensitive or potentially controversial activities.

Pro

- Committees may not settle for less.
- Resolving this issue to satisfaction of Committees may make our other relationships easier.

Con

- Weeding out activities to be reported may be awkward and cumbersome and will likely be judgmental.
- Potential conflict with Presidential or Executive prerogative with respect to independent action.

C. Drop discussion with Congressional staffers on the provision and keep its meaning ambiguous.

Pro

- Avoids antagonizing Committees on hypothetical questions.
- Allows greatest latitude in short run on interpretation of the provision's meaning.

Con

- Leaves us vulnerable to criticism if at any time Congress believes it should have been informed on a controversial activity (the Director of Finance believes we need a basis for ignoring this provision in law). ☐

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Decision

- ☐ A. Push for limited interpretation.
- ☐ B. Discuss and accept an understanding of some reportable items.
- ☐ C. Drop discussions. ☐

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6. The Office of General Counsel also needs your guidance on whether or not to push for a sentence in the statute or conference report which would make clear that, whatever its ultimate configuration, "Section 103 is to be construed consistently with the oversight language in the National Security Act." OMB Staff, in their response to our conference appeal letter, noted a potential risk of reopening debate over the Oversight Act. OGC believes this is unlikely and that language clarifying the relationship between Section 103 and that Act would be useful. ☐

Decision

☐ Pursue such a provision.

☐ Do not pursue such a provision. ☐

☐

Maurice Lipton

Attachments:  
As Stated

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ATTACHMENT B

Excerpt from planned appeal on 1982 Authorization Conference (letter recently cleared by OMB)

The House Bill contains, at Section 103, a provision related to notification of expenditures in excess of program authorizations which is not found in the Senate Bill. This provision was first enacted last year as part of the fiscal year 1981 Authorization. Since its enactment, it has become evident that the intent, meaning and effect of this provision are imprecise and unclear. The provision seems to conflict with time-honored and well-understood oversight and review mechanisms related to funding and reprogramming procedures. It may also potentially be in conflict with the oversight language enacted in the fiscal year 1981 Authorization and now contained in Title V of the National Security Act. I understand that our staffs have been working together in an attempt to resolve these problems. I hope that we will be successful in this effort, but if a solution cannot be reached quickly I would urge that the conferees delete Section 103 so that we can continue with consultations aimed at agreement on mutually acceptable and understandable procedures if, indeed, current practices are not adequate.

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